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DE RUEHPF #0180/01 0510126
ZNR UUUUU ZZH
P 200126Z FEB 08
FM AMEMBASSY PHNOM PENH
TO RUEHC/SECSTATE WASHDC PRIORITY 9364
INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEATRS/DEPT OF TREASURY WASHINGTON DC 0722

UNCLAS SECTION 01 OF 02 PHNOM PENH 000180

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STATE FOR EAP/MLS, EAP/EP, AND EB/IPC
STATE PLEASE PASS TO USTR--BISBEE
STATE PLEASE PASS TO USPTO
BANGKOK FOR USPTO--NESS

E.O. 12958: N/A
TAGS: [ETRD](#) [ECON](#) [KIPR](#) [CB](#)
SUBJECT: CAMBODIA: COMMENTS FOR SPECIAL 301 REVIEW

REF: A. STATE 9475

[1](#)B. 07 PHNOM PENH 1438

[1](#)1. (SBU) Summary: Post believes that Cambodia falls below the threshold for inclusion in the Special 301 Report Watchlist at this time. Cambodia is not fully TRIPS compliant and its IPR enforcement is currently weak. However, senior government officials have publicly committed to improving the IPR regime, the government has actively sought USG assistance in this area, and officials are taking some steps to uphold IPR laws--including confiscating pirated materials and registering trademarks. While pirated optical media and counterfeit products are pervasive in the market place, virtually all of the products (with the exception of copies of Khmer language movies and music) are produced elsewhere. The local market is small, with most sales of foreign products to tourists and foreigners residing in Cambodia, and damage to the U.S. industry is minimal. After decades of turmoil beginning in the early 1970's and ending only in 1998 with the surrender of the last Khmer Rouge units, Cambodia has come late to awareness of the IPR issue. Given its conflict-ridden past and eagerness to improve IPR enforcement, post believes Cambodia should be given more time to bring its actions in line with its intentions. End Summary.

IPR Environment

[1](#)2. (SBU) Although not yet a signatory to the Berne Convention, Cambodia has most of the legislation in place to protect Intellectual Property Rights (IPR), including laws on trademarks, copyrights and patents. However, Cambodia's IPR protection regime is not fully compliant with its WTO TRIPS commitments. In November 2005, the WTO granted a deadline extension until 2013 for Cambodia and other least developed countries to enforce copyright laws and begin accepting patents. Cambodia has not fully implemented its commitments under the BTA in the area of IPR protection and enforcement.

[1](#)3. (SBU) Infringements of IPR are pervasive, ranging from the sale of pirated computer software, music compact discs, and DVDs to the sale of counterfeit products, including watches and drugs. The expense and scarcity of books has led to the sale of photocopied books, including college textbooks and comic books.

[1](#)4. (SBU) Piracy of domestic media is a growing problem and is increasingly recognized as such by the government. There have been occasional police raids on pirated copies of domestic CDs or DVDs, always at the request of the copyright holder, and rarely, if ever, leading to prosecution. Cambodian production companies have increased their complaints about piracy over the last year, and Culture Ministry statistics show that movie production has dropped from 61 films made in 2006 to 25 films made in 2007.

15. (SBU) Piracy of foreign movies and music is limited and has relatively little impact outside Cambodia's borders. Post is not aware of the existence of plants to manufacture DVDs in Cambodia, although small shops duplicate copyrighted material on rewritable CDs. The great majority of pirated discs on the market are produced in Malaysia or China. Given the small size of the Cambodian middle class--and the absence of Khmer language voice overs or subtitles in Western movies--there is very little local demand. Sales are mostly to tourists and foreigners living in Cambodia. Damage to the U.S. industry appears to be very small.

Enforcement Actions

16. (U) The Royal Government of Cambodia (RGC) has taken some measures to enforce its IPR obligations. In October 2005, police officers raided a factory that was manufacturing counterfeit Marlboro cigarettes. The factory manager was later convicted in absentia. In October 2007, acting on a request from an independent bookseller, the police launched a small raid against photocopied foreign books being sold at local markets. Periodic confiscations of pirated materials netted 47,000 discs (almost entirely Khmer music and movies) in 2007. At the January 2008 annual conference of the Ministry of Culture and Fine Arts, Deputy Prime Minister Sok An announced that the government would step up its efforts to prosecute copyright violators.

17. (U) Since 1991, the Ministry of Commerce has maintained an effective trademark registration system, registering more than 30,000 trademarks, including 5,500 for U. S. companies. On several occasions, the Ministry of Commerce has observed the use of American trademarks, such as Holiday Inn, Pizza Hut and McDonald's. When these infringements have become known, the Ministry has obtained agreement from the violators to change the names of their establishments, resolving 32 such disputes in 2007.

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Cambodia Eager for IPR Capacity Building Assistance

18. (SBU) Senior Cambodian officials publicly affirm the importance of IPR protection, both to protect their country's nascent film and music industries and in order for Cambodia to participate fully in world markets. In both the February and November 2007 Trade and Investment Framework Agreement (TIFA) talks, Commerce Minister Cham Prasidh talked of creating a link between trade and IPR. At the November meeting, he proclaimed his ambition for Cambodia to become a "model country" for IPR in the same way that Cambodia has blazed a trail in labor rights, and specifically spoke of developing a policy to ensure that anyone legally producing IP-sensitive goods in Cambodia would be scrutinized to ensure that they did not export pirated materials. According to the Minister, draft laws on Geographical Indicators, Layout Designs of Integrated Circuits, and Plant Breeders Rights are under review, and the government is drafting sub-decrees on IP border measures, compact disc production and trade, IPR enforcement procedures, and collective management organizations.

19. (SBU) Senior Cambodian officials and heads of IPR-related government offices publicly evince a strong interest in working with the U.S. to improve the IPR regime, but a variety of factors make meaningful progress difficult to achieve at the working level. Like nearly all Cambodian government agencies, the IPR bodies suffer from severe human capacity limitations. While Cambodia regularly participates in USPTO regional IP training, only a small number of officials can understand English well enough to participate. These staff members--who are often among the most effective workers--are quickly promoted out of their IP positions. Poor donor coordination has led to some wasted efforts (such as separate efforts to translate the same documents). Some Cambodian requests for TA are for items that relevant USG agencies cannot provide or typically find are not effective--e.g. office equipment, long-term advisors--or to achieve objectives not required under TRIPS obligations--e.g. establishing a copyright registration system. USG officials have taken pains, where appropriate, to coordinate these

requests with other donors who are able to provide this assistance. In some cases there appears to be a real reluctance at the working level to simplify and rationalize the registration system's complexity, which provides opportunities for extracting bribes from rightsholders.

¶10. (U) Despite the difficulties listed above, U.S. agencies continue to work with Cambodia to improve its IPR enforcement. In addition to reviewing requests made during the November TIFA meeting, USPTO is planning to conduct a copyright seminar in Cambodia in 2008, perhaps in conjunction with a delegation of IP law professionals coming in April via the People to People citizen ambassador program. USPTO is also working with the USTR to fulfill U.S. Trade Representative Schwab's pledge to send an IP capacity building team to Cambodia.

Recommendation

¶11. (SBU) Like many developing countries, Cambodia has come late to awareness of the need to protect IPR. Suffering through decades of turmoil that began in the early 1970's and which included the genocidal Khmer Rouge regime, Cambodians only began to establish political and economic stability in 1998 when the last Khmer Rouge units laid down their arms. With this turbulent past, it is not surprising that IPR initially was not a high priority for the RGC. Nevertheless, there is now growing awareness within the senior ranks of the RGC and increasing desire to increase its capabilities and to cooperate with the USG on this issue. Given Cambodia's conflict-ridden past, recent enforcement actions, and intense interest in cooperating with the U.S., both bilaterally and in the ASEAN framework, post believes that the USG should give Cambodia additional time to fully establish its IPR regime before considering its inclusion on the Special 301 Watchlist.

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